

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

First Appeal No. 344/2007

(Motilal Khamdeo Rokde & others **VERSUS** Balkrishna Baliram Lokhande & 2 others)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Kimmatkar, counsel for the appellant.
 Shri Deshmukh, counsel for the respondent no.1(i) to (iv).
 Shri Mamdalwar, counsel for the respondents nos.2 and 3.

CORAM : Smt. Vasanti A. Naik, J.

DATE : 13th September, 2007.

The first appeal is taken up for final hearing with the consent of the learned counsel for the parties.

The appellants are the objectors before the executing Court. They had filed an objection under Order 21 Rule 97 and 98 of the Code of Civil Procedure. It was rejected by an order dated 27.02.2007 by the 5th Joint Civil Judge (Senior Division), Nagpur. The order dated 27.02.2007 is challenged in this first appeal.

Few facts giving rise to this first appeal are stated thus-----

The respondent no.1 had filed a suit against the respondent nos.2 and 3 for specific performance of contract to sell the suit property. It is not in dispute that the respondent no.2 had not filed a written statement in the said suit and the respondent no.3 was proceeded ex-parte. The suit was, however,

decreed by a judgment and decree dated 25.10.2002 and the trial Court granted the relief of specific performance of contract in favour of plaintiff/respondent no.1. After the passing of the decree on 25.10.2002, the suit property was sold by the defendant nos.2 and 3 in favour of the present appellants by a registered sale-deed dated 20.11.2002. Since the respondent nos.2 and 3 i.e. the judgment debtors did not execute the sale-deed of the suit property in favour of the plaintiff/decreed holder, the sale-deed of the suit property was executed in favour of the plaintiff/decreed holder through the Court on 08.02.2005. When the decree holder sought the possession of the suit property, the appellants/objectors filed the objection under Order XXI Rule 97 and 98 of the Code of Civil Procedure and prayed for a declaration that the objectors were the legal owners of the suit property and the judgment and decree passed by the trial Court on 25.10.1002 was not binding on them. The objectors also sought for setting aside of the execution proceedings initiated by the decree holder. The objectors prayed that the decree holder be restrained from dispossessing the objectors from the suit property. It was the case of the objectors that they were the bona fide purchasers for value without notice and they became aware of the pendency of the execution proceedings and the decree passed in the suit filed by the plaintiff only on

28.02.2006. According to the objectors, they had purchased a property for a valuable consideration of Rs.1,60,000/- on 20.11.2002 by a registered sale-deed, and therefore, the relief prayed for, under Order XXI Rule 97 & 98 should be granted in their favour.

The executing Court by an order dated 26.04.2006 directed an inquiry under the provisions of Order XXI Rule 97 and 98 of the Code of Civil Procedure. The parties were permitted to adduce evidence in support of their respective claim. The Court, however, observed that the alienation in favour of the objectors was hit by the doctrine of lis-pendens as it appeared from record that the decree holder had taken abundant precaution by intimating about the pendency of the lis to the concerned Sub-Registrar. The parties tendered evidence before the executing Court and by the order dated 27.02.2007, the objection was rejected by the executing Court. The order dated 27.02.2007 is challenged in the instant appeal.

The learned counsel for the appellant submitted that the executing Court was not justified in rejecting the objection as the appellants were bona fide purchasers for value without notice and the provisions of Section 52 of the Transfer of Property Act also did not apply to the facts of this case. It is submitted on behalf of the appellants that the agreement of sale was executed between the

respondent nos.2 and 3 herein and the appellants in the year 1992 itself and the sale-deed was executed in favour of the appellants in view of the said agreement of sale on 20.11.2002. It was submitted on behalf of the appellants that the rejection of the objection by the executing Court would result in the ouster of the appellants from the suit property when they were put in possession of the same in pursuance of the sale-deed dated 20.11.2002. According to the counsel, the appellants have paid a valuable consideration of Rs. 1,68,000/- to the respondent nos.2 and 3, and therefore, it was necessary for the executing Court to protect the possession of the appellants.

The learned counsel for the respondent nos.2 and 3 also supported the case of the appellants and submitted that since there was an agreement of sale executed in favour of the appellants in the year 1992, it was necessary for the judgment debtors to execute the sale-deed in favour of the appellants herein on 20.11.2002. He further submitted that a M.J.C. against the judgment and decree dated 25.10.2002 is pending.

Shri P.A. Deshmukh, the learned counsel, who appears on behalf of the legal representatives of the decree holder, on the other hand, supported the order passed by the executing Court on 27.02.2007. He relied on the provisions of Order XXI Rule 97 & 98 and 102 of the Code of Civil Procedure to point out

that Rules 98 and 100 would not apply where the resistance or obstruction to the execution of a decree is by a person to whom the judgment debtor has transferred the property after the institution of the suit. By relying on the provisions of Order XXI Rule 102 of the Code of Civil Procedure, it is canvassed on behalf of the respondent no.1 that the objection filed by the appellants before the executing Court was not tenable under the provisions of Order XXI Rule 97 and 98 of the Code of Civil Procedure. It was further canvassed on behalf of the decree holder that the executing Court has rightly held that the decree passed by the trial Court on 25.10.2002 binds not only the judgment debtor but also the subsequent purchaser. He, therefore, sought for the dismissal of this first appeal.

I have perused the application under Order XXI Rule 97 & 98 of the Code of Civil Procedure and the impugned order passed by the executing Court on 27.02.2007. I have also perused a copy of the judgment and decree dated 25.10.2002. It is conspicuous to note that though the appellants have submitted that the sale-deed was executed in their favour on 20.11.2002 in view of the earlier agreement of sale executed in their favour on 31.07.1992, the appellant no.1 admitted in his cross-examination that there was no writing prior to the execution of sale-deed at Exh.47. Thus, the case of the appellants that

there was an earlier agreement of sale executed between the appellants and the respondent nos.2 and 3 was rightly discarded by the executing Court. The executing Court further considered the fact that a public notice was issued on 14.11.2002 by the objectors and immediately on 20.11.2002, a sale-deed was got executed by the appellants in their favour. According to the executing Court that showed the hurry in which the sale-deed was executed by the judgment debtor in favour of the appellants/ objectors. The transaction between the judgment debtor and the decree holder had taken place in the year 1996 and by the agreement of sale dated 03.09.1996, the judgment debtors had agreed to sell the property to the decree holder for a consideration of Rs.2,34,360. This clearly showed that the decree holders were ready to purchase the property for an amount of Rs. 2,34,360/- in the year 1996. It was, therefore, incredible that a vendor or a bona fide seller could have sold the property to the objectors in the year 2002 for a consideration of Rs.1,68,000/-. In view of the clear admission of appellant no.1 Motilal that there was no agreement of sale in writing between the parties, the case of the appellants that the judgment debtors executed the sale-deed in favour of the appellants in view of the earlier agreement of sale dated 31.07.1992 falls to the ground. In view of the fact that the decree holder had agreed to purchase

the property for an amount of Rs.2,34,360/- in the year 1996 and the same was sold to the appellants for Rs.1,68,000/- in the year 2002 clearly showed the collusion between the judgment debtor and the objectors so as to defeat the claim of the decree holder. The executing Court, therefore, by relying on the aforesaid admitted facts came to a conclusion that the appellants/objectors were not bona fide purchasers for value. The executing Court further rightly appreciated that the objectors had not examined the judgment debtor to show that the transaction between the judgment debtor and the objectors was a genuine transaction and the appellants were bona fide purchasers. There is no reason, much less a justifiable reason, for the judgment debtor to sell the property to the objectors on 20.11.2002 after the passing of the judgment on 25.10.2002. The executing Court weighed the absence of the judgment debtor in the proceedings under Order XXI Rule 97 & 98 of the Code of Civil Procedure against the case of the objectors. The executing Court further rightly held that the principle of lis pendens clearly apply to the facts of the case. The executing Court was also justified in holding that the present appellants/prospective purchasers were also bound by the decree passed by the trial Court on 25.10.2002.

In the facts and circumstances of the case,

the objection raised by the appellants herein was rightly not upheld by the executing Court and the same was rejected by an order dated 27.02.2007. I find no fault with the order of the executing Court. The first appeal, therefore, fails and is dismissed with no order as to costs.

JUDGE

APTE